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10/608,337	06/30/2003	Eric Nace	MFCP.102770	8767

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EXAMINER

ELMORE, STEPHEN C

ART UNIT	PAPER NUMBER
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2185

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/608,337

Applicant(s)

NACE ET AL.

Examiner

Stephen Elmore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24, 26, 29, 33, 39, 40 and 44-61 is/are rejected.
- 7) ☒ Claim(s) 25, 27, 28, 30-32, 34-38 and 41-43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.


## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

  
**STEPHEN C. ELMORE**  
**PRIMARY EXAMINER**

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**DETAILED ACTION**

1. This Office action responds to the election of claims 1-61, Group I, and the cancellation of claims 62-66, Group II, filed December 28, 2005, made in response to the Restriction Requirement mailed December 14, 2005.
2. Claims 1-61 remain for examination.

***Oath/Declaration***

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR § 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.
4. The oath or declaration is defective because:
  - a. Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).
5. Specifically, citizenship data of inventor/applicant D. Bejarano is shown altered on the declaration without the required initialing and dating.

***Drawings***

6. The drawings are objected to because:
  - a. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:
    1. Figure 2, elements 112a and 112b;
  - b. Figure 2 is objected to because the placement of reference characters 112a and 112b makes the drawing uncertain as to what specific drawing elements these are in reference to;
  - c. The drawings are objected to under 37 CFR § 1.84(o) because the following drawing elements lack meaningful legends (i.e., a numerical reference character is not a meaningful legend):
    1. Figure 2, two unlabeled boxes directly under memory managers 118a and 118b.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or

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figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR § 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

7. The disclosure is objected to because:

a. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. See MPEP § 606.01. The title is imprecise in its indication of the invention to which the claims are directed;

b. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR § 1.75(d)(1) and MPEP § 608.01(o). Correction of the following instances of claim language which do not have proper antecedent basis in the specification is required:

1. Claims 50-56, "computer readable medium". "Computer readable medium" has no antecedent basis in the specification;

2. Claim 13, "cache module" lacks antecedent basis;

3. Claim 18, "engine interface". "Engine interface" lacks antecedent basis in the specification;

4. Claims 45, 48, 49, "memory block means", "communications engine means", "application programming interface means", all described "means" lack antecedent basis in the specification;

5. Claim 6, "instantiated from classes generated by the communications engine" lacks antecedent basis in the specification;

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- c. The specification is also objected to because:
1. the specification is unclear as to what kind of element or entity is a "communications engine";
  2. the term "communications engine" is not disclosed as, and does not appear to be, a term in the art, since it can not be found in technical dictionaries;
  3. the specification does not provide a definition of a "communications engine";
  4. the specification does not say whether a "communications engine" is software, hardware, or whether it is a combination of hardware and software;
  5. the specification merely gives, in numerous instances, that which the communications engine "may" do or perform;
  6. the specification does not give with any certainty or specificity that which the element "communications engine" is required to be made of, or required to do, in order to be a communications engine;
  7. and so, in addition to all the above reasons and due to the presence throughout the specification of numerous instances of the "may" type "permissible" language, as opposed to using mandatory, "definite" language when explaining the communications engine, the specification is objected to because the communications engine's metes and bounds are not actually disclosed in the specification with the required degree of specificity to teach how to make and or use the element "communications engine".

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:
- The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
9. Claims 1-23, 39, 40, 44-49, 53, 54, and 57-61 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains,

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or with which it is most nearly connected, to make and/or use the invention. For all the reasons as given above in the objection to the specification, paragraphs 7.c.1-7., the reasons above being incorporated herein, the disclosure fails to teach one of ordinary skill in the art how to make and/or use the subject matter "communications engine" because it is undisclosed, unknown to the requisite degree, what are the metes and bounds of the subject matter.

10. Claims 50-56 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

The claims assert the limitation "computer readable medium being readable to execute a method for managing communication between processes" however, a computer readable medium *per se* (that is, since the claims do not contain stored on the medium suitable computer processor instructions for performing the method, no stored instructions have been claimed, are not there to be executed) a computer medium without instructions cannot perform any computer method, because the medium by itself -- even if it is read to execute a process -- cannot perform any process, since it does not contain any stored instructions. Therefore, such claimed subject matter as is presently claimed lacks any ability or functionality to perform a method.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 19, 39, 40, 44, 48, 53, and 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite because:

- a. Claims 19, 40, and 54, in the language "at least one of..." and "its corresponding process" it is unclear what "one of" and "it" refers to;
- b. Claim 39, 48, and 53, in the language "at least one of..." it is unclear what "one of" refers to;
- c. Claims 39, 40, 44, 53, 54, "the communications engine" lacks proper antecedent basis.

***Claim Rejections - 35 USC § 101***

13. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

14. Claims 50-56 are rejected under 35 U.S.C. 101 because:

- a. the claimed invention is directed to non-statutory subject matter; and
- b. the claimed invention lacks patentable utility.

The claims assert the limitation "computer readable medium being readable to execute a method for managing communication between processes" however, a computer readable medium *per se* (that is, a medium without stored instructions is nothing more than a medium having the potential for storing computer processor instructions, it does not as yet contain any such instructions and so, does not yet qualify as an article of manufacture to be readable to execute a computer implemented method, is directed to non-statutory subject matter.

And further, the claims assert the limitation "computer readable medium being readable to execute a method for managing communication between processes" however, a computer readable medium *per se* (that is, since the claims do not contain stored on the medium suitable computer processor instructions for performing the method, no stored instructions have been claimed, are not there to be executed) a computer medium without instructions cannot perform any computer method, because the medium by itself -- even if it is read to execute a process -- cannot perform any process, since even if read it does not contain any stored instructions. Therefore, such claimed subject matter as is presently claimed lacks any ability or functionality to perform a computer implemented method, lacks patentable utility.

***In re Steele***

15. Claims 1-23, 39, 40, 44-49, 53, 54, and 57-61 are therefore withdrawn from further consideration (e.g., such as under 35 USC §§ 102 or 103) because it is improper for the examiner to rely on speculative assumptions regarding the meaning of a claim or claims and then to base a rejection on these assumptions under 35 USC § 103. *In re Steele*, 305 F.2d 859, 134 USPQ 292 (CCPA 1962).

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The state of the disclosure and claims are such that it is not possible for the examiner to determine with any degree of specificity or distinctness the scope of coverage of these claims and limitations, to the extent that the examiner is uncertain as to what invention is presently being claimed (the invention including the feature, communications engine) in claims 1-23, 39, 40, 44-49, 53, 54, and 57-61.

Additionally, where there is a great deal of confusion and uncertainty as to the proper interpretation of the limitations of a claim, it would not be proper to reject such a claim on the basis of prior art. In the present application there exists great uncertainty as to the proper interpretation of the limitations of these claims and even upon reading the specification, drawings, and claims taken as a whole, such reading does not permit one of ordinary skill in the art to comprehend the scope of coverage for these claims desired by the applicant due to the numerous problems in interpreting the meaning of the claims as noted above in the objections and rejections of the disclosure and these claims.

***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 24, 26, 29 and 33 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Applicant's acknowledged prior art Figure 1 and paragraph [0006] (hereafter, Applicant's Acknowledged Prior Art, or "AAPA").

First, Noting that the limitation in the independent claim 24 preamble, "managing communication between (emphasis added) processes" lacks any mention or structural support in the claim body, therefore, fails to breath life into the claim, and so, is interpreted as lacking patentable weight in the following rejections.

AAPA teaches the claimed method (for managing communication between processes, see Note above), Figure 1 and paragraph [0006], comprising:



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assigning at least one memory block from a set of memory blocks to each of a plurality of processes is taught as memory manager having assigned at least one memory block (memory block(s) in which common variable 2 is stored) from a set of memory blocks (fixed shared memory space); and directing a data access request from at least one of the plurality of processes to the at least one corresponding assigned memory block based on memory management data is taught as the Process B's request for Variable 2 made to the memory manager that then uses the "mapping" structure to direct the request to retrieve the common variable 2 from the assigned memory space (memory block) in the fixed shared memory space based on the use of the mapping structure (labeled "Mapping to Fixed (Absolute) Address") which is the claimed memory management data in the figure, and where the two opposing arrows represent the movement of the data that is being stored and retrieved to and from the memory manager, to and from the fixed shared memory space, as shown in the figure to meet the request for each process A and/or B's request for Variable 1 and/or 2;

as to claim 26, AAPA also teaches this limitation because the claimed memory management data comprising a plurality of memory management objects associated with the plurality of processes is the "mapping" in the figure, which inherently includes a mapping structure wherein each line of the mapping represents one of a plurality of memory management objects because one of ordinary skill would recognize that the "mapping" is inherently comprised of multiple individual mappings, each individual mapping relating a process (e.g., A or B) to a corresponding variable (e.g., 1 or 2);

as to claim 29, AAPA teaches this limitation because the set of memory blocks comprises a first memory address is taught as "fixed shared memory space";

as to claim 33, this is taught as the arrow showing the retrieval of stored data in response to process B's request for data.

***Allowable Subject Matter***

18. Claims 25, 27, 28, 30-32, 34-38, and 41-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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*Conclusion*


19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Elmore whose telephone number is (571) 272-4436. The examiner can normally be reached on Mon-Fri from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Kim can be reached on (571) 272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 13, 2006

  
**STEPHEN C. ELMORE**  
**PRIMARY EXAMINER**